



February 14, 2003

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## HOUSE BILL No. 1175

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DIGEST OF HB 1175 (Updated February 11, 2003 9:57 AM - DI 103)

**Citations Affected:** IC 8-1.

**Synopsis:** Underground plant protection. Beginning September 1, 2004, requires all operators of underground utility facilities to join an association that provides mutual receipt of notice of planned excavation or demolition operations to operators if the articles of incorporation or the bylaws of the association impose certain membership and voting requirements on the association's board of directors.

**Effective:** July 1, 2003.

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### Kuzman, Borrer, Reske

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January 8, 2003, read first time and referred to Committee on Commerce and Economic Development.  
February 13, 2003, amended, reported — Do Pass.

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HB 1175—LS 7253/DI 103+



February 14, 2003

First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

## HOUSE BILL No. 1175

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-1-26-15 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. (a) **This section**  
3 **applies to recordings made with a county recorder before**  
4 **September 1, 2004.**

5 (b) **Except as provided in subsection (e),** an operator that has  
6 underground facilities located in Indiana shall record with the county  
7 recorder of each county in which the facilities are located a list  
8 containing the name of each township in the county in which the  
9 operator has underground facilities, including those facilities that have  
10 been abandoned in place by the operator but not yet physically  
11 removed. The list must include the name of the operator and the name,  
12 title, address, and telephone number of the operator's representative  
13 designated to receive the written or telephonic notice of intent required  
14 by section 16 of this chapter.

15 ~~(b)~~ (c) An operator shall record any changes in the information  
16 contained in the list recorded under subsection ~~(a)~~ (b) with the county  
17 recorder of the county in which these facilities are located within thirty

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(30) calendar days of the change. The document reflecting the changes shall be cross-referenced to the original list recorded under subsection ~~(a)~~: **(b)**.

~~(c)~~ **(d)** The county recorder shall charge a fee in accordance with IC 36-2-7-10.

~~(d)~~ **(e)** An association meeting the requirements of section 17 of this chapter shall be responsible for providing the information required in subsections ~~(a)~~ **(b)** and ~~(b)~~ **(c)** for the association's members and shall be responsible for paying the fee contained in subsection ~~(c)~~ **(d)** for the association's members.

SECTION 2. IC 8-1-26-15.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 15.5. (a) Except as provided in subsection (b), after August 31, 2004, the association described in section 17(c) of this chapter is responsible for:**

**(1) providing the information; and**

**(2) paying the fee;**

**required under section 15 of this chapter for each of the association's members.**

**(b) The association described in section 17(c) of this chapter is not required to provide information or pay a new fee under this section for a member:**

**(1) that has provided the information and paid the fee required under section 15 of this chapter before September 1, 2004; or**

**(2) on whose behalf the association has provided the information and paid the fee required under section 15 of this chapter before September 1, 2004;**

**unless the association receives notice from the member of a change in the information recorded before September 1, 2004, under section 15 of this chapter.**

SECTION 3. IC 8-1-26-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 16. (a) Except as provided in section 19 of this chapter, before commencing an excavation or demolition operation described in section 14 of this chapter each person responsible for the excavation or demolition must shall serve written or telephonic notice of the person's intent to excavate or demolish. The notice must be received at least two (2) full working days but not more than twenty (20) calendar days before the commencement of the work. However, a person responsible for excavation or demolition may commence work before the elapse of two (2) full working days if all affected operators have notified the person**

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that the location of all the affected operators' facilities have been marked or that the affected operators have no facilities in the location of the proposed excavation or demolition.

**(b) For a notice served under this section before September 1, 2004,** the notice must be served on each operator, or each operator's association, who has recorded a list required by section 15 of this chapter indicating that the operator has underground facilities located in the proposed area of excavation or demolition.

**(c) After August 31, 2004, a notice under this section must be served on the association described in section 17(c) of this chapter. A county recorder who receives an inquiry from a person seeking to provide notice of an excavation or a demolition under this section shall refer the person to the association described in section 17(c) of this chapter. After receiving a notice under this section, the association shall:**

**(1) determine whether one (1) or more of the association's members have underground facilities located in the proposed area of excavation or demolition, based on recordings made under section 15 or 15.5 of this chapter; and**

**(2) provide notice of the proposed excavation or demolition to any member identified under subdivision (1) as having underground facilities located in the proposed area of excavation or demolition.**

**(d)** A person responsible for demolition must give an operator a reasonable amount of time, as mutually determined by the operator, the person responsible for demolition, and the project owner, to remove or protect the operator's facilities before demolition of the structure is commenced.

**(e)** The written or telephonic notice required by subsection (a) must contain the following information:

**(1)** The name, address, and telephone number of the person serving the notice, and, if different, the person responsible for the excavation or demolition.

**(2)** The starting date, anticipated duration, and type of excavation or demolition operation to be conducted.

**(3)** The location of the proposed excavation or demolition.

**(4)** Whether or not explosives or blasting are to be used.

**(5)** The approximate depth of excavation.

**(f)** If the notice required by this section is by telephone, the operator or association shall maintain an adequate record of the notice for three (3) years to document compliance with this chapter. A copy of the record shall be furnished to the person giving notice to excavate

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or demolish upon written request. **For a notice given by telephone after August 31, 2004, the association described in section 17(c) of this chapter is responsible for maintaining the record of notice required by this subsection.**

SECTION 4. IC 8-1-26-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 17. (a) **Before September 1, 2004**, operators, in any combination or group, may form and operate an association in Indiana to record for the association's members the information required by section 15 of this chapter and to provide for mutual receipt of notice of excavation or demolition operations under section 16 of this chapter. An association may provide the service on behalf of operators having underground facilities in Indiana and shall record with the county recorder of the county in which those facilities are located the following information:

- (1) The telephone number and address of the association.
- (2) A description of the geographical area served by the association.
- (3) A list of the names and addresses of each operator receiving the service from the association.

(b) An association formed under this section must have the capability to serve any operator located in Indiana. Associations that qualify under this section include, without limitation, the "One Call" system that is managed by a ~~group of operators in the~~ Indiana **Underground Plant Protection Service.**

(c) **After August 31, 2004, an operator that has underground facilities located in Indiana must be a member of the Indiana Underground Plant Protection Service or its successor organization if the articles of incorporation or the bylaws of the Indiana Underground Plant Protection Service or its successor organization do the following:**

- (1) **Provide that the board of directors of the Indiana Underground Plant Protection Service or its successor organization is composed of:**
  - (A) **Five (5) members representing electric utilities other than municipal electric utilities, including corporations organized or operating under IC 8-1-13 or corporations organized under IC 23-17, some of whose members are local district corporations (as described in IC 8-1-13-23).**
  - (B) **Five (5) members representing investor owned gas utilities, including pipelines.**
  - (C) **Five (5) members representing telecommunications providers, including providers of cable television service.**



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**(D) Five (5) members representing water or sewer utilities other than municipal water or sewer utilities.**

**(E) Five (5) members representing political subdivisions, including municipal utilities.**

**(2) Require the affirmative vote of at least eighty percent (80%) of each category of members in subdivision (1) to approve an increase, a decrease, or any other adjustment to the membership dues, rates, tariffs, locate fees, or any other charges imposed by the Indiana Underground Plant Protection Service or its successor organization.**

**(d) The association identified in subsection (c) shall provide the services described in subsection (a) by:**

**(1) recording for the association's members the information required by section 15.5 of this chapter; and**

**(2) providing for mutual receipt of notice of excavation or demolition operations under section 16 of this chapter.**

**(e) The association identified in subsection (c) shall:**

**(1) annually update the association's grid map data, including street addresses; and**

**(2) make reasonable efforts to reduce incorrect locate requests issued to the association's members.**

SECTION 5. IC 8-1-26-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. (a) Each operator or association notified under section 16 of this chapter shall, in two (2) full working days of receiving the notice of intent provided in section 16 of this chapter (unless a shorter period is provided by agreement between the person responsible for the excavation or demolition and the operator), supply to the person responsible for the excavation or demolition the following information, using maps when appropriate:

**(1) The approximate location and description of all the operator's underground facilities that may be damaged as a result of the excavation or demolition.**

**(2) The location and description of all facility markers indicating the approximate location of the underground facilities.**

**(3) Any other information that would assist that person in locating and avoiding damage to the underground facilities, including providing adequate temporary markings indicating the approximate location of the underground facility and locations where permanent facility markers do not exist.**

**(b) Facility locate markings must consist of paint, flags, or stakes or any combination that mark the approximate location of the underground facilities.**



(c) Color coding of facility locate markings indicating the type of underground facility must conform to the following color coding:

Facility and Type of Product	Specific Group Identifying Color
(1) Electric power distribution and transmission . . . . .	Safety red
(2) Municipal electric systems . . . . .	Safety red
(3) Gas distribution and transmission . . . . .	High visibility safety yellow
(4) Oil distribution and transmission . . . . .	High visibility safety yellow
(5) Dangerous materials, product lines, steam lines . . . . .	High visibility safety yellow
(6) Telephone and telegraph systems . . . . .	Safety alert orange
(7) Cable television . . . . .	Safety alert orange
(8) Police and fire communications . . . . .	Safety alert orange
(9) Water systems . . . . .	Safety precaution blue
(10) Sewer systems . . . . .	Safety green
(11) Proposed excavation . . . . .	White

(d) Each operator or association notified under section 16 of this chapter shall, within two (2) full working days of receiving the notice of intent provided in section 16 of this chapter, provide notification to the person responsible for the excavation or demolition if the operator has no facilities in the location of the proposed excavation or demolition.

**(e) This section does not apply to an operator making an emergency repair to the operator's underground facility.**

SECTION 6. IC 8-1-26-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 22. (a) **This section does not apply to an association formed under section 17 of this chapter.**

(b) If an operator suffers a pecuniary loss as a result of a violation of this chapter, the operator may bring a civil action against the person



- 1 who caused the loss for the following:
- 2 (1) An amount equal to the operator's actual damage to the
- 3 facility.
- 4 (2) The costs of the action.
- 5 (3) A reasonable attorney's fee.
- 6 ~~(b)~~ (c) At the court's discretion, a court having jurisdiction may
- 7 award punitive damages up to three (3) times the operator's actual
- 8 damage.
- 9 ~~(c)~~ (d) It is a defense to an action brought under this chapter if an
- 10 operator fails to comply with the duties imposed under this chapter.
- 11 ~~(d)~~ (e) In addition to the remedies described in subsection ~~(a)~~, (b),
- 12 an operator may bring an action to enjoin a person excavating or
- 13 demolishing a structure in an area that includes the operator's facilities
- 14 until that person complies with this chapter.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred House Bill 1175, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 8-1-26-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 15. (a) **This section applies to recordings made with a county recorder before September 1, 2004.**

**(b) Except as provided in subsection (e),** an operator that has underground facilities located in Indiana shall record with the county recorder of each county in which the facilities are located a list containing the name of each township in the county in which the operator has underground facilities, including those facilities that have been abandoned in place by the operator but not yet physically removed. The list must include the name of the operator and the name, title, address, and telephone number of the operator's representative designated to receive the written or telephonic notice of intent required by section 16 of this chapter.

~~(b)~~ **(c)** An operator shall record any changes in the information contained in the list recorded under subsection ~~(a)~~ **(b)** with the county recorder of the county in which these facilities are located within thirty (30) calendar days of the change. The document reflecting the changes shall be cross-referenced to the original list recorded under subsection ~~(a)~~: **(b)**.

~~(c)~~ **(d)** The county recorder shall charge a fee in accordance with IC 36-2-7-10.

~~(d)~~ **(e)** An association meeting the requirements of section 17 of this chapter shall be responsible for providing the information required in subsections ~~(a)~~ **(b)** and ~~(b)~~ **(c)** for the association's members and shall be responsible for paying the fee contained in subsection ~~(c)~~ **(d)** for the association's members.

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- (1) providing the information; and**
- (2) paying the fee;**

**required under section 15 of this chapter for each of the association's members.**

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**(b) The association described in section 17(c) of this chapter is not required to provide information or pay a new fee under this section for a member:**

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- (2) on whose behalf the association has provided the information and paid the fee required under section 15 of this chapter before September 1, 2004;**

**unless the association receives notice from the member of a change in the information recorded before September 1, 2004, under section 15 of this chapter.**

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**(b) For a notice served under this section before September 1, 2004,** the notice must be served on each operator, or each operator's association, who has recorded a list required by section 15 of this chapter indicating that the operator has underground facilities located in the proposed area of excavation or demolition.

**(c) After August 31, 2004, a notice under this section must be served on the association described in section 17(c) of this chapter. A county recorder who receives an inquiry from a person seeking to provide notice of an excavation or a demolition under this section shall refer the person to the association described in section 17(c) of this chapter. After receiving a notice under this section, the association shall:**

- (1) determine whether one (1) or more of the association's members have underground facilities located in the proposed area of excavation or demolition, based on recordings made under section 15 or 15.5 of this chapter; and**

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**(2) provide notice of the proposed excavation or demolition to any member identified under subdivision (1) as having underground facilities located in the proposed area of excavation or demolition.**

**(d)** A person responsible for demolition must give an operator a reasonable amount of time, as mutually determined by the operator, the person responsible for demolition, and the project owner, to remove or protect the operator's facilities before demolition of the structure is commenced.

**(b) (e)** The written or telephonic notice required by subsection (a) must contain the following information:

- (1) The name, address, and telephone number of the person serving the notice, and, if different, the person responsible for the excavation or demolition.
- (2) The starting date, anticipated duration, and type of excavation or demolition operation to be conducted.
- (3) The location of the proposed excavation or demolition.
- (4) Whether or not explosives or blasting are to be used.
- (5) The approximate depth of excavation.

**(c) (f)** If the notice required by this section is by telephone, the operator or association shall maintain an adequate record of the notice for three (3) years to document compliance with this chapter. A copy of the record shall be furnished to the person giving notice to excavate or demolish upon written request. **For a notice given by telephone after August 31, 2004, the association described in section 17(c) of this chapter is responsible for maintaining the record of notice required by this subsection.**

SECTION 4. IC 8-1-26-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 17. (a) **Before September 1, 2004**, operators, in any combination or group, may form and operate an association in Indiana to record for the association's members the information required by section 15 of this chapter and to provide for mutual receipt of notice of excavation or demolition operations under section 16 of this chapter. An association may provide the service on behalf of operators having underground facilities in Indiana and shall record with the county recorder of the county in which those facilities are located the following information:

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(b) An association formed under this section must have the capability to serve any operator located in Indiana. Associations that qualify under this section include, without limitation, the "One Call" system that is managed by a group of operators in the Indiana Underground Plant Protection Service.

(c) After August 31, 2004, an operator that has underground facilities located in Indiana must be a member of the Indiana Underground Plant Protection Service or its successor organization if the articles of incorporation or the bylaws of the Indiana Underground Plant Protection Service or its successor organization do the following:

(1) Provide that the board of directors of the Indiana Underground Plant Protection Service or its successor organization is composed of:

(A) Five (5) members representing electric utilities other than municipal electric utilities, including corporations organized or operating under IC 8-1-13 or corporations organized under IC 23-17, some of whose members are local district corporations (as described in IC 8-1-13-23).

(B) Five (5) members representing investor owned gas utilities, including pipelines.

(C) Five (5) members representing telecommunications providers, including providers of cable television service.

(D) Five (5) members representing water or sewer utilities other than municipal water or sewer utilities.

(E) Five (5) members representing political subdivisions, including municipal utilities.

(2) Require the affirmative vote of at least eighty percent (80%) of each category of members in subdivision (1) to approve an increase, a decrease, or any other adjustment to the membership dues, rates, tariffs, locate fees, or any other charges imposed by the Indiana Underground Plant Protection Service or its successor organization.

(d) The association identified in subsection (c) shall provide the services described in subsection (a) by:

(1) recording for the association's members the information required by section 15.5 of this chapter; and

(2) providing for mutual receipt of notice of excavation or demolition operations under section 16 of this chapter.

(e) The association identified in subsection (c) shall:

(1) annually update the association's grid map data, including street addresses; and

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**(2) make reasonable efforts to reduce incorrect locate requests issued to the association's members."**

Delete page 2.

Page 3, delete lines 1 through 18.

Page 3, line 21, reset in roman "or association".

Page 3, line 21, delete "by an association".

Page 4, line 27, reset in roman "or association".

Page 4, line 27, delete "by the association".

Page 4, line 34, delete "report" and insert "**repair**".

Page 4, delete lines 35 through 42.

Page 5, delete lines 1 through 29.

Page 5, line 32, delete "the" and insert "**an**".

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1175 as introduced.)

STEVENSON, Chair

Committee Vote: yeas 9, nays 0.

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